Comprehensive Health Planning Council of Southeastern Michigan *and* Comprehensive Health Planning Council of Southeastern Michigan Managers, Petitioner. Case 7-RC-15884

July 13, 1981

DECISION ON REVIEW AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Sylvia A. James of the National Labor Relations Board. On June 18, 1980, the Regional Director for Region 7 issued a Decision and Direction of Election in which he found that four of the Employer's five managers were employees within the meaning of the Act and that they constituted a unit appropriate for bargaining. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision, contending that its managers were supervisors and/or managerial employees, and that, in any event, they did not constitute a separate unit appropriate for bargainining. The Petitioner filed a statement in opposition to the request for review. By telegraphic order dated July 18, 1980, the National Labor Relations Board granted the Employer's request for review. Thereafter, the Employer filed a brief on review,[1] and the Petitioner relied on its previously filed statement in opposition.

The Board has considered the entire record with regard to the issues on review, and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. Petitioner is not a labor organization within the meaning of Section 2(5) of the Act.[2]

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. Petitioner seeks to represent a unit of health care professional managers, contending that these individuals are employees within the meaning of Section 2(3) of the Act. The Employer, on the other hand, asserts that the managers are supervisors within the meaning of Section 2(11) and/or managerial employees and, therefore, are not covered by the Act. In the alternative, the Employer contends that, if the managers are found to be employees, they do not constitute an appropriate unit separate from other administrative personnel.

The Employer is a nonprofit corporation which provides health care planning services to seven counties in southeastern Michigan. An executive director heads the organization, which is divided into five operational divisions: Planned development and coordination, health system development, administrative services, project review, and data management and analysis. The divisions are administered by division directors, who, along with other administrative personnel, report to the executive director. One manager is assigned to each division and he or she reports to the respective division director. Approximately 70–80 professional and clerical staff are divied among the divisions. The clerical employees are represented by Local 79, Service Employees International Union, and the professional staff is represented by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).

The professional staff operates essentially as a "think tank" for governmental and health care agencies. They study and report on legislation affecting health care and health care planning, proposed health care projects, health care facility usage patterns, and the general health of the residents of southeastern Michigan.

The managers assign, coordinate, and review the work of the professionals,[3] assure that time targets are met, and participate to varying degress in the general direction of their respective divisions. They also spend a significant amount of time performing the same type of work as the professionals.[4]

[1] The Employer also filed a request for oral argument. We hereby deny this request as the record, the request for review, and the briefs adequately present the issues and contentions of the parties.

[2] In light of our finding, *infra*, that the managers are supervisors, and since it appears that the Petitioner is comprised solely of the managers involved herein, we find that Petitioner does not represent employees and therefore is not a labor organization within the meaning of the Act.

[3] Although at the time of the hearing two of the managers had no professional employees assigned to them, it is clear from the record that, due to the nature of the Employer's operations, the professional employees are transferred to different managers on a project-by-project basis. Thus, it seems clear that the current professional assignments are temporary, and we note that no party contends that such assignments are permanent.

[4] In finding the managers to be employees, the Regional Director, citing *Adelphi University*, 195 NLRB 639, 643–644 (1972), relied in part on the facts that "the individuals whom the managers oversee . . . would not be part of the petitioned-for bargaining unit as they are represented by other labor organizations" and that "substantial parts of [the manager's] time is spent on professional tasks." In *Adelphi University*, we held that persons who spent less than half their time supervising employees in another unit were not supervisors within the meaning of Sec. 2(11). In *New York University*, 221 NLRB 1148, 1155-57 (1975), we explained our *Adelphi* holding by noting that the alleged supervisors had been hired as professional employees, as opposed to supervisors, and that their part-time supervision of employees performing ancillary services did not change the professionals' relation to management. We find *Adelphi* inapposite to the present case. Were we to find the managers to be employees, we would find also that their community of interest lies with the professional employees and that they would properly be included in a unit with them. Further, it is clear that the managers were hired to act as supervisors for the Employer and that their supervisory activities are not merely ancillary to their professional duties.

The record shows that the managers have the authority to recommend and in some cases actually have recommended hire, transfer, discipline, discharge, commendation, promotion, pay increases, and overtime. The recommendations, however, are reviewed by higher management and are not always followed. The managers also prepare annual evaluations of the employees who work under them, and these evaluations are placed in the employees' personnel files.

The UAW contract provides that "supervisors," defined as "the manager-level person to whom the employee primarily reports," are the persons with whom employees arrange vacation time. The managers testified, however, that they forwarded all vacation requests to their division directors. In addition, it appears that the division directors must sign all timeslips and, therefore, ultimately approve all time off, sick pay, and vacation pay. The contract also states that "supervisors" (no definition provided) shall arrange compensatory time with the employee and that employees work from 9 a.m. to 5 p.m. unless they have modified their schedule with the appropriate supervisor. Further, two of the managers received memorandums from management directing "primary management level persons" to coordinate clerical tardiness makeup and "supervisors" to make appropriate compensatory time arrangments.

Both the UAW and the SEIU contracts provide that the managers are the first step in the grievance procedure. Further, the record shows that, while many, if not most, grievances were taken by the union stewards directly to the second step, it is undisputed that in one instance management refused to hear a grievance until it was processed through the manager in the first step. In another case, a manager resolved a grievance at the first step, although his decision subsequently was overturned by higher management.

Finally, the managers are paid at a higher rate than the senior professional employees beneath them in the Employer's hierarchy. Their job descriptions and advertisements placed by the Employer for manager positions indicate that the managers are to supervise employees.

Based on the foregoing and the record as a whole, we find that the managers possess and exercise supervisory authority within the meaning of Section 2(11). Thus, the managers assign, coordinate, and review the work of their subordinates and prepare annual evaluations which become part of the employees' permanent personnel files. Further, in sending memorandums regarding compensatory time and tardiness makeup procedures to at least two of the managers, the Employer assigned those managers the authority given to "supervisors" and "primary management-level persons" as set forth in the corresponding provisions of the UAW and SEIU collective-bargaining agreements. Finally, we emphasize that the managers are the representatives of the Employer with whom employees deal at the first step of the grievance procedures established by both collective-bargaining agreements, that they have exercised their authority to adjust grievances on behalf of the Employer to some degree, and that the Employer has relied on this authority in the handling of at least one grievance. Accordingly, we conclude that the managers are supervisors. See *Formco, Inc.*, 245 NLRB 127 (1979). As we have found that the individuals Petitioner claims to represent are supervisors within the meaning of the Act, we shall dismiss the petition.[5]

ORDER

It is hereby ordered that the petition in Case 7-RC-15844 be, and it hereby is, dismissed.

[5] Since we have concluded that the managers are supervisors, we find it unnecessary to reach the issue of whether they are also managerial employees.